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his recollection at an examination before trial, the books of a corporation of which he was treasurer. He refused to obey the order on the ground that so doing would incriminate him. *Held*, that the defendant is guilty of contempt of court. *Pray* v. *Blanchard Co.*, 95 N. Y. App. Div. 423.

The decision was based upon the grounds that the defendant could assert his alleged privilege only by appealing from the order, and that the mere production of the books for the purpose of refreshing his recollection could not of itself tend to incriminate him. The second ground seems to have been well taken. The rule that a witness need not furnish evidence against himself is of long standing. *East India Co.* v. *Campbell*, 1 Ves. 246. And the production of documents to be used in evidence is within the privilege. *Boyd* v. *United States*, 116 U. S. 616. In the principal case, however, the books were, by the terms of the order, to be used merely for the purpose of refreshing the recollection of the witness. It seems clear that a court has power to make such an order. *Chapin* v. *Lapham*, 20 Pick. (Mass.) 467. If, upon the examination, questions should be put to the defendant the answers to which would tend to incriminate him, he could then assert his privilege. The mere production of documents does not make them evidence. *Merrill* v. *Merrill*, 67 Me. 70.

BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

POWER OF STATE COURT OVER RECEIVER APPOINTED BY FEDERAL COURT. — The old English rule that a receiver could not be sued without the leave of the court appointing him caused much injustice, when courts, usually federal, began to use such officials in this country to take charge of large corporations. Small claimants were practically without legal redress against corporations so managed. To remedy this, Congress, in March, 1887, enacted that receivers appointed by any United States court may be sued in respect of anything done in carrying on the business, without the previous leave of the appointing court; provided, however, that such suit shall be subject to the general equity jurisdiction of the appointing court, "so far as the same may be necessary to the ends of justice." Some points as yet unsettled under this law are treated in an interesting recent article in the Central Law Journal. *Has a State Court Jurisdiction to Issue an Injunction Against a Receiver Appointed by a Federal Court?* by W. A. Coutts, 59 Cent. L. J. 382 (Nov. 11, 1904). The writer first discusses whether a state court in which suit has been brought has jurisdiction to levy execution for the enforcement of its judgments. Conceding the federal court's authority to intervene if justice demands, it is nevertheless contended that the conferring of jurisdiction to sue gave the state court jurisdiction to enforce judgment by its own independent process. It is argued that there are only *dicta* against this, and *In re* Tyler (149 U. S. 164), which has been regarded as deciding the point, is distinguished as within the clause authorizing interference so far as "necessary," even if proceedings under a tax warrant come within the meaning of "suit" in the act of Congress, which is doubted.

Mr. Coutts's view on this matter seems hardly likely to prevail, however. Where there is no statute dispensing with the need of leave to sue in another court and such permission is granted, process may not issue from that other court, for it is for the appointing court to settle the time and manner of satisfying the judgment. *Harding* v. *Nettleton*, 86 Mo. 658. Confusion would seem to be avoided and the end of the act giving leave to sue attained by the observance of the same rule.

If power to issue process is denied to the state court Mr. Coutts still maintains that it may have authority to issue injunctions against receivers. Levy and sale under process, he admits, affect property, and creditors may have a right to a *pro rata* distribution of the proceeds, requiring control by the appointing

court. No such reason, he says, demands control of an injunction, which operates *in personam.* In proper cases it would not infringe any rights represented by the receiver, and a state court is as competent to pass on the propriety of it as a federal court Mr. Coutts admits, however, that the three state court decisions in favor of his view do not give the subject the consideration it deserves. A Michigan case is opposed, and it may well be doubted if the Supreme Court of the United States will decide that the act was intended to give such power.

FOREIGN JUDGMENTS AS EVIDENCE OF THE RIGHTS FOUNDED UPON THEM. — A recent article in the Columbia Law Review contains a concise and scholarly summary of a large subject. *History of the Adoption of Section I. of Article IV. of the United States Constitution and a Consideration of the Effect on Judgments of that Section and of Federal Legislation*, by George P. Costigan, Jr., 4 Columbia L. Rev. 470 (Nov. 1904). That well-known section, enlarging upon a provision in the Articles of Confederation, provides that "full faith and credit" shall be given in each state to the public acts, records, and judicial proceedings of every other state, and that Congress shall prescribe the method of proof and the effect thereof. Congress at once exceeded the authority here given by exercising, in connection with it, the right given by the Constitution to legislate in aid of the general judicial power. For the acts of 1790 and of 1804, since incorporated in the Revised Statutes (sec. 905), gave to judgments by courts of the territories and possessions, as well as of the states, "full faith and credit" in every court "within the United States." Mr. Costigan notes that judicial legislation completed the circle by securing a like recognition throughout the land for judgments of the federal courts.

While most foreign judgments seem to have been merely *prima facie* evidence of matters properly adjudicated, the Constitution made sister-state judgments conclusive evidence, open only to the defense of lack of jurisdiction and to such other defenses as could be brought against them where they were rendered. The writer believes that the constitutional provision is self-executing without the statutes, and that, upon a demurrer to a complaint which alleges a sister-state judgment but does not authenticate it as required by statute, the question may yet come before the Supreme Court. Other points discussed are the application of those enactments to judgments of justices of the peace and to state judgments sued upon in courts of the Philippine Islands, for example, which are perhaps not literally "within the United States."

In contrasting the treatment of foreign and of sister-state judgments Mr. Costigan seems to take a position regarding comity that may be open to misunderstanding. Citing Hilton *v.* Guyot (159 U. S. 113), he says that "what comity sustains, unfriendliness can take away," and that "comity does not require us to do more by others than they do by us." It seems the better opinion that the admission to-day of many foreign judgments as conclusive evidence is based not upon curtesy but upon law justified by our own convenience. DICEY, CONFLICT OF LAWS 10. Since the business of the courts is merely to enforce the common law of which comity has thus become a recognized part, they may have no regard for their own kindly or unkindly feelings toward a foreign state. *The Nereide*, 9 Cranch (U. S.) 388, 422. It is only by legislation that foreign judgments may be deprived of the right they now enjoy under the principle of comity.

RESCISSION BY PAROL AGREEMENT. — The same number of the Columbia Law Review contains an instructive article in text-book style by Professor Williston. *Rescission by Parol Agreement*, 4 Columbia L. Rev. 455. The discussion is concerned with the incidents and effect of a parol agreement to rescind, and is based on the proposition that such an agreement, in order to